

# SPECIAL NOTICE

April 17, 2006

For further information contact:  
Telephone Information Center  
1-800-647-7706 or (360) 705-6676

Alternate Formats (360) 705-6715  
Teletype 1-800-451-7985

## Beer and Wine Sales to Retailers

Producers of beer and wine may sell their products directly to Washington retailers under certain conditions. This law is effective April 14, 2006 and expires June 30, 2008. (Second Substitute Senate Bill (2SSB) 6823, Chapter 302, Laws of 2006)

To sell directly to Washington retailers, producers of beer and wine must register with and meet the requirements of the Liquor Control Board (LCB). You must directly contact the LCB for their registration and reporting requirements. The Liquor Control Board's web site is <http://www.liq.wa.gov/default.asp>.

This notice only explains the excise tax reporting responsibilities as administered by the Washington State Department of Revenue.

## Washington's Excise Taxes on Beer and Wine Sales

### Business and Occupation (B&O) Tax

Washington's B&O tax only applies to gross proceeds from sales meeting both of the following requirements:

1. Producer/seller is located in this state or has otherwise established *nexus* in Washington (see below), **and**
2. Goods sold are received in Washington by the retailer or the retailer's agent.

The B&O tax applies to gross proceeds from the sale of tangible personal property without deductions on:

- cost of goods sold
- cost of materials used
- labor costs
- interest
- discounts paid
- delivery costs
- taxes
- losses

Sellers/producers that obtain resale certificates from purchasing retailers report under the wholesaling B&O tax classification. Otherwise, the B&O tax must be reported under retailing B&O tax classification, and the seller must collect and report retail sales tax.

In addition, breweries and wineries that produce beer and wine in Washington are subject to the B&O tax under the manufacturing classification. Producers that sell wine or beer at wholesale must report under both the wholesaling and manufacturing classification and claim a multiple activities tax credit (MATC). For more detailed information about the MATC reporting requirements, refer to WAC 458-20-19301.

### **Litter Tax**

Litter tax is imposed on manufacturers, wholesalers, and retailers of certain products which contribute to the litter problem in this state. The tax rate is .00015. Beer, other malt beverages, and wine sales are subject to litter tax and sellers with nexus (subject to B&O tax) must report and pay litter tax on sales of such products. There is a separate line on the excise tax return to report litter tax. (WAC 458-20-243)

### **What is Nexus?**

“Nexus” is any business activity performed by a seller in Washington that is significantly associated with the seller’s ability to establish or maintain a market for its products in Washington. (Washington Administrative Code (WAC) 458-20-193)

A company does not need to have a physical location in the state to have nexus and be subject to Washington’s tax laws. There are many activities that create sufficient nexus for B&O tax to apply to an out-of-state company’s sales delivered into Washington. These activities include, but are not limited to:

- Goods are located in Washington at the time of sale.
- Seller has a branch office, local outlet or other place of business in this state.
- Orders are solicited in this state by an agent or other representative of the seller.
- Seller performs significant activities in relation to establishment or maintenance of sales into the state. This can include participation in trade shows at which the seller’s goods are promoted.

### **Delivery of Goods**

#### **In-state delivery**

Licensed retailers are allowed to contract with common carriers to pick up the beer or wine from the out-of-state producers, effective July 1, 2006. (2SSB 6823)

Generally, delivery of goods to a freight consolidator, freight forwarder or for-hire carrier used to arrange for and/or transport goods into this state is considered a delivery to the purchaser in Washington. This holds true even though the freight consolidator, freight forwarder, or for-hire carrier first receives the goods in another state.

#### **Out-of-state pick-up by carrier**

For receipt to take place at an out-of-state location the for-hire carrier must be authorized and take actions to assure that the goods conform to a purchase order or contract. At a minimum this requires that the goods be physically examined by the receiving agent. The agent must also have access to the purchase order or contract in order to determine if the goods conform. Simply giving the for-hire carrier written authority to accept the goods at an out-of-state location without some further act of acceptance will not be considered receipt by the purchaser or the purchaser’s agent at that location.

## Filing Requirements

For most companies registration with the Liquor Control Board will automatically result in a tax registration with the Washington State Department of Revenue. Businesses will receive excise tax returns to report their Washington sales. **Businesses are required to file even if they do not have Washington sales during the tax period.** To file returns electronically, visit our online services at <https://fortress.wa.gov/dor/elf/FortressLogon/aboutonlineservices/efile.aspx>.

An out-of-state producer that does not have nexus can request to be placed on *active non-reporting* status with the Department of Revenue. This allows the business to remain active, but not required to file tax returns. To request an account status change, please call our toll free number at **1-800-647-7706**.

**Note: Your excise tax return filing obligation with the Department of Revenue is separate from and in addition to your reporting requirements with the LCB.**

## For More Information

For additional information on doing business in Washington, see our web site at <http://dor.wa.gov>.

For information on licensing requirements, see the Liquor Control Board's web site at [http://www.liq.wa.gov/publications/publications\\_license.asp](http://www.liq.wa.gov/publications/publications_license.asp).

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